

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE LUIS MORALES,

Plaintiff,

v.

PELICAN BAY STATE PRISON,
JACQUEZ, FERGUSON, and
COLEMAN,

Defendants.

No. C 06-4175 PJH (PR)

**PARTIAL ORDER OF
DISMISSAL AND ORDER OF
SERVICE**

This is a civil rights case brought pro se by a state prisoner. In plaintiff's initial complaint the only defendant was Pelican Bay State Prison. The court dismissed the claim against the prison in the initial review order because state agencies cannot be sued in federal court and granted leave to amend to name proper defendants. Plaintiff has amended.

Plaintiff contends that defendant Lieutenant Ferguson was the hearing officer at his rules violation hearing. He contends that Ferguson refused to permit him to have the assistance of an "investigating employee" and would not allow him to put on a defense, although he had documents to support his arguments. This is sufficient to state a claim against Ferguson. See *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974) ("the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals."); *id.* at 570 ("Where an illiterate inmate is involved . . . or where the complexity of the issues makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case, he

1 should be free to seek the aid of a fellow inmate, or . . . to have adequate substitute aid . . .
2 from the staff or from a[n] . . . inmate designated by the staff.").

3 Plaintiff contends that defendant Sergeant Coleman falsified the rules violation
4 report which Lieutenant Ferguson heard. This fails to state a claim. *See Sprouse v.*
5 *Babcock*, 870 F.2d 450, 452 (8th Cir. 1989) (prisoner has no constitutionally guaranteed
6 immunity from being falsely or wrongly accused of conduct which may result in the
7 deprivation of a protected liberty interest).

8 Finally, plaintiff contends that defendant Jacquez, the warden, tried to "coerce"
9 inmates to move to a different housing unit and abused his authority by implementing rules
10 and procedures not provided for in CDCR regulations. These allegations involve asserted
11 violations of state law, which are not grounds for relief under section 1983.

12 The claims against Coleman and Jacquez will be dismissed, and the complaint will
13 be served on Ferguson.

14 CONCLUSION

15 1. Plaintiff's claims against Coleman and Jacquez are **DISMISSED**.

16 2. The clerk shall issue summons and the United States Marshal shall serve,
17 without prepayment of fees, copies of the complaint with attachments and copies of this
18 order on the following defendant: Lieutenant Ferguson. Plaintiff states that he can be
19 found at Pelican Bay State Prison.

20 3. In order to expedite the resolution of this case, the court orders as follows:

21 a. No later than sixty days from the date of service, defendants shall file a
22 motion for summary judgment or other dispositive motion. The motion shall be supported
23 by adequate factual documentation and shall conform in all respects to Federal Rule of
24 Civil Procedure 56, and shall include as exhibits all records and incident reports stemming
25 from the events at issue. If defendants are of the opinion that this case cannot be resolved
26 by summary judgment, they shall so inform the court prior to the date their summary
27 judgment motion is due. All papers filed with the court shall be promptly served on the
28 plaintiff.

1 b. Plaintiff's opposition to any dispositive motion shall be filed and served
2 upon defendants no later than thirty days from the date the motion was served upon him.
3 Plaintiff must read the attached page headed "NOTICE -- WARNING (SUMMARY
4 JUDGMENT)," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-
5 954 (9th Cir. 1998) (en banc).

6 If defendants file an unenumerated motion to dismiss claiming that plaintiff failed to
7 exhaust his available administrative remedies as required by 42 U.S.C. § 1997e(a), plaintiff
8 should take note of the attached page headed "NOTICE -- WARNING (EXHAUSTION)."

9 c. If defendants wish to file a reply brief, they shall do so no later than fifteen
10 days after the opposition is served upon them.

11 d. The motion shall be deemed submitted as of the date the reply brief is
12 due. No hearing will be held on the motion unless the court so orders at a later date.

13 4. All communications by plaintiff with the court must be served on defendants, or
14 defendants' counsel once counsel has been designated, by mailing a true copy of the
15 document to defendants or defendants' counsel.

16 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
17 No further court order under Federal Rule of Civil Procedure 30(a)(2) is required before the
18 parties may conduct discovery.

19 6. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
20 informed of any change of address by filing a separate paper with the clerk headed "Notice
21 of Change of Address." He also must comply with the court's orders in a timely fashion.
22 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
23 Federal Rule of Civil Procedure 41(b).

24
25 **IT IS SO ORDERED.**

26
27 Dated: July 12, 2007.



PHYLLIS J. HAMILTON
United States District Judge

28 G:\PRO-SE\PJH\CR.06\MORALES175.SERV

NOTICE -- WARNING
(SUMMARY JUDGMENT)

If defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact--that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.

**NOTICE -- WARNING
(EXHAUSTION)**

If defendants file an unenumerated motion to dismiss for failure to exhaust, they are seeking to have your case dismissed. If the motion is granted it will end your case.

You have the right to present any evidence you may have which tends to show that you did exhaust your administrative remedies. Such evidence may be in the form of declarations (statements signed under penalty of perjury) or authenticated documents, that is, documents accompanied by a declaration showing where they came from and why they are authentic, or other sworn papers, such as answers to interrogatories or depositions.

If defendants file a motion to dismiss and it is granted, your case will be dismissed and there will be no trial.